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IN THE CIRCUIT COURT OF
THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 94-08273 CA (22)

HOWARD A. ENGLE, M.D.,
et al.,

Plaintiffs,

vs.

R.J. REYNOLDS TOBACCO
COMPANY, et al.,

Defendants.
_____/

Miami-Dade County Courthouse
Miami, Florida
Monday, 9:30 a.m.
February 1, 1999

TRIAL - VOLUME 198

The above-styled cause came on for trial before the Honorable Robert Paul Kaye, Circuit Judge, pursuant to notice.

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On behalf of Defendant Brown & Williamson
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(Whereupon, the following proceedings were had:)

THE COURT: Good morning, all.

For those of you who lost, I'm sorry. For those of you who won, congratulations.

I guess we better talk about this thing in the paper today. You've seen this article in the paper? I guess you have or have not.

MR. HEIM: Oh, the article on Mr. Rosenblatt?

THE COURT: Yes. It's in the Business section on Page 9.

Olga, let them take a look.

We have to talk about it. It's there, so we have to talk about it.

MR. HEIM: Your Honor, I believe we ought to start the discussion this morning, not with the article in the Business section in the paper, but with the other matter, because I think, as I see it, it's far more serious.

And I'd like to kind of outline, now that I've seen it -- and we've brought the tapes with us -- I'd like to outline for the Court why I have such a concern about it.

THE COURT: Let me ask a question before you start. I only saw one -- I don't know if they had any more than one -- because I didn't really look at

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halftime. I was busy doing other stuff. I only saw one. Was there more than one?

MR. HEIM: My understanding was that only one commercial aired on the Superbowl itself.

THE COURT: I didn't know if I had missed one.

MR. HEIM: I don't think so. I believe, Your Honor, that the commercial aired at the end of the second quarter, which is no doubt the one Your Honor saw --

THE COURT: Yes. Halftime.

MR. HEIM: -- which is the one that was played last night, and my concern about that is that it deals with issues that are directly before this jury. And I think that we will find that, or at least I expect, there's a substantial likelihood that a number of jurors either saw the commercial last night during the football game, or saw it when it was on the Thursday night news or on the Friday morning news.

Now, it's also possible that jurors read about it, read about the commercial, since a description of the commercial appeared in the Sunday Miami Herald, along with a photograph of a tobacco company executive testifying and a caption beneath the photograph describing the fact that the State of

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Florida's advertising agency --

THE COURT: Do we have that page?

MR. HEIM: Yes, sir. I have it. And we'll mark this at some point.

THE COURT: Okay.

MR. HEIM: This appears, as Your Honor will see, on the front page of Section E of the Sunday Miami Herald, January 31st, 1999.

As I said, it shows a picture of what is purported to be Andrew H. Tisch, CEO, Lorillard Tobacco Company, then a description below it describing the laugh track which has been superimposed on this man's testimony before Congress.

Later on -- I see that Your Honor is ahead of me. You've already turned to the inside page. It continues on, I think it says, 9E.

THE COURT: It's on the last page.

MR. HEIM: It continues on, and then next to it, small column, simple ad with a very powerful message, describing the ad again.

Now, I believe that when you put all of these things in together, the advertisement -- I mean the commercial last night, the news show reports of the commercials -- which I want to talk about in a minute because they're different from the commercial itself,

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Judge -- and the newspaper articles about them, that the State of Florida has put this very trial in jeopardy, because what we have now is two weeks ago we had the State of the Union message and the President -- and Your Honor was concerned about that and you asked the jurors questions. And the jurors responded to those questions about the President commenting on youth marketing, another issue that at least for now is still in this case.

The Court was satisfied with the jurors' responses. I was concerned, but I appreciated the Court's effort and decided to just hope for the best at that point with regard to it.

But this I submit to Your Honor is far worse, because when you see the tape of what the news -- what I guess it is, the news people did -- I don't know. I'd like to find out, actually. Because when Your Honor sees the tape of what went on local T.V. stations Thursday night and Friday morning, you will see that the commercial that aired on the Superbowl, the one that in a very sarcastic and disparaging way ridicules the testimony of the tobacco executive, but in the middle of it it intersperses a scene from this trial. And that is, it shows Your Honor on the bench, it shows me addressing the jury, and from an angle approximately

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over toward the door it shows the jurors. You can't see the jurors' faces, but you can see the jurors sitting and listening to whatever it was I was saying. I hope they were listening.

But, anyway, you see that right there and it's put right in the middle of the commercial.

THE COURT: What channel was that?

THE BAILIFF: Channel 7.

MR. HEIM: I believe Channel 7 was one.

MR. MOSS: If it was Channel 7, we haven't got it. We have Channel 6.

THE BAILIFF: This was during the football game.

THE COURT: No, please.

Okay. So it was the Channel 6 Thursday news which aired on Channel 9.

MR. HEIM: Then it was on Friday morning.

THE COURT: Do you have a tape of that?

MR. HEIM: Yes, sir. We have it now to show you.

THE COURT: And the commercial that aired?

MR. HEIM: We have three tapes: the tape of the commercial interspersed with the trial footage that was on Channel 6; we have a tape of what appeared Friday morning on a local news station, but I don't

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know which station it is. It will probably tell us when we watch the tape. Then we have a tape of the commercial as it appeared on the Superbowl last night.

And they're all very brief. They're all short periods of time. And they all do the same thing. They heap scorn and ridicule by adding this laugh track on these witnesses, both of whom, I believe, have already testified by deposition in this case. And both of whom I believe have testified by deposition in this case on the very issue of which the State of Florida's commercial ridicules them and disparages them.

So this in some ways, what you have here, is a continuation of the State of Florida's billboard campaign, but in my view a thousand times worse, because it's not just one thing that's fixed on two major highways; it is right out there and very, very hard for any viewer not to see. And if it was not calculated to influence this jury, its effect, in my view, is almost certainly to do so.

So I have no doubt that if Your Honor decides to ask the jury about it, and I expect that Your Honor will, that they will say -- they will tell the Court whether or not they saw the commercial. And I'm sure that the jurors will say that they will not be influenced by it, because, realistically, they know

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that that's what they're supposed to do.

I think they understand that that's what they're supposed to try to do, and I also think that they, like all of the rest of us, like Your Honor, like counsel, like everybody in this courtroom, we're invested in this case. We've had three months of jury selection to pick this jury and we've had three and a half months of trial testimony now. And there's a heavy weight of gravity to try to keep this case together. So there's a lot at stake.

But I would urge Your Honor to consider, when you look at these tapes, that when we say there's a lot at stake, that a lot includes not only the investment we all have, but the very bedrock value that underscores everything that we do in a courtroom here, which is impartiality, the very anchor of our judicial system, the impartiality of the fact finder.

Your Honor has mentioned that value a number of times in the course of this trial, how, when Your Honor puts on the robe, your overwhelming and overriding duty and responsibility is to be impartial. I believe that that impartiality is being compromised by what's going on with these commercials and billboards, but especially these commercials and the way that they have appeared on the news and the way

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that they portray witnesses' testimony.

And I think the real question for the Court is whether or not, after you see these commercials and you see the way they put them together with the trial footage, and you see what appeared again on the Superbowl last night, the real question is whether there is a reasonable apprehension that the jury will be affected in deciding a material issue because of their exposure to the influences outside this courtroom and in particular this commercial. And I believe that there is such a material apprehension.

I believe, reluctantly, that these kinds of things are too much and too pointed. And as much as we have invested in this trial, that these things now, especially the way they've been portrayed over the last three or four days, overwhelm the ability of a jury to be impartial. And I believe Your Honor, as hesitant as I am to say it, should declare a mistrial.

THE COURT: Okay. I know you were speaking off the cuff, but you mentioned something there that when I put these robes on I'm supposed to be impartial and that has been compromised.

MR. HEIM: No, no. I didn't say that. If I said that, that's the last thing I meant to say. What I meant to say, if I didn't say it well, I know how

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much Your Honor values that principle, because you have stressed to this jury time and again, in trying to explain to them how important it is to try to be impartial, that you're a human being as well, like the rest of us, but when you put on that robe you understand that your duty is to the law. And you've explained that to them in how they must --

THE COURT: The way it looked in cold transcript, that you were questioning the impartiality of the Court, and I'm sure you didn't mean that.

MR. HEIM: I absolutely didn't mean that. I absolutely have no doubt about the impartiality of the Court.

THE COURT: Mr. Rosenblatt, do you have anything?

MR. ROSENBLATT: Your Honor, on behalf of thousands of members of the Engle class, I say to the Court that it does not serve the cause of justice to dignify frivolous motions. This is a frivolous motion. And I will explain why.

It is a frivolous, cynical, calculated, big business motion. And this is the strategy of the corporate people in New York who said, yeah, we'll pay out these billions to the states, and of course there will always be stuff on television, there will always

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be stuff in the newspapers. We'll also be mentioned in a State of the Union address. Then we'll come into courtrooms and we'll say we're prejudiced, we're prejudiced.

As Mr. Heim makes this motion, there is a $100 million campaign going on calculated to show what good guys the tobacco industry is; they do not want youth to smoke.

I'm reminded -- I happened to see the movie A Civil Action. And there was a line in A Civil Action by the defense lawyer who said: The last place in the world you want to look for truth is in a courtroom.

And the audience laughed. They didn't need a sound track. I heard around me just laughter. Everyone basically in today's cynical society tends to believe that.

And I would submit to the Court that when you look back at the three months of this trial, most of the sidebars have not been an attempt to seek or elucidate the truth, but to obscure the truth.

As I said when we were together last, Judge, the only reason in the world the State of Florida had the money to put on what I assume was a very, very expensive commercial -- it's just ironic beyond belief, and from the standpoint of the Engle class it's just

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hypocritical beyond belief. Without the voluntary decision of the tobacco companies to pay billions of dollars to the State of Florida, the State of Florida never in a million years would have put on that ad.

This motion insults the intelligence of the jury. This insults the intelligence of Americans. And it's nonsense. Because the whole thrust of my case is, the whole thrust of my case is that when they say cause hasn't been proven, I'm laughing. I'm laughing. And I'm saying to the jury, these cynical -- they know it causes; there ain't nothing new. That's the case. That's the case. That's what we're saying.

We had an obviously -- this is a situation we had zero to do with. The Engle class had zero to do with this. We started jury selection July of last year. They're asking for a remedy so Draconian and so -- we've had 30 witnesses come from all over the country.

And, Judge, if you step back and if anyone thinks of accepting their argument, no case could ever go to trial, there could never be a trial of a case, because there will always be something. Every state of the union now has a ton of billions of dollars to put on antitobacco ads, and the tobacco companies knew that. So reward them, reward them.

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THE COURT: Were the antitobacco ads part of the settlement on, say, a commitment within the settlement or was that something outside the settlement?

MR. ROSENBLATT: My understanding, and Mr. Heim, I assume, can answer more directly, my understanding is I've seen in the press constant reference -- because the money can't go to individuals. None of this money is going to compensate individuals. And my understanding is that the agreement between the tobacco companies and the Attorney Generals absolutely contemplates antitobacco ads as part of the settlement. This is what they voluntarily agreed to.

How in the world can anyone have believed that following the payment of billions and billions of dollars to every state in the union that there would not be these kinds of commercials.

And that the tobacco companies -- it really, it really takes -- it just takes a level of cynicism to come in and make this kind of motion, when the commercial was shown with their money in a voluntary settlement that they made. The most sophisticated and successful industry in the history of commerce.

And I think Your Honor should give very short shrift to a motion for mistrial based on that or based

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on any publicity. There will always be publicity, as the article in the Miami Herald, which was just brought to my attention, is a perfect example. Someone tells me: Rosenblatt, your picture is in the Miami Herald. So I got it and I looked and it's got Travolta, because someone made that connection. I never talked to the reporter. I don't know the reporter. And that was the whole focus of the article. And it's inevitable. It's just inevitable.

THE COURT: Well, I wanted to ask you about that. It's only one portion of the article and it does show your picture and does show Travolta, and it talks about the Broin case. Nothing to do with this case. And, of course, your representation here before the Court is --

MR. ROSENBLATT: That reporter left about 15 messages and I never spoke with her. And I don't know the reporter. I've heard the name, but I don't know her.

THE COURT: I appreciate that.

Yes, sir.

MR. HEIM: Your Honor, I don't flat-out know the answer to the Court's question. My belief is that --

THE COURT: I have a copy of it upstairs in

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the office.

MR. HEIM: The settlement agreement. We could look.

THE COURT: But be that as it may.

MR. HEIM: I don't believe that, even if advertising by the state were contemplated, and as I said, I don't know whether it was or not, but even if it was, I know it was not contemplated that advertising by the state would comment on issues that were pending in a lawsuit brought on behalf of tens of thousands of people likely in this Engle class.

So whatever advertising means, it surely should not have meant that it was intended to comment on issues that are in dispute at this trial.

And whether or not the state did it, I don't know who put together the news tape, but whether they did it or not, somebody made the connection. Because when they showed on the news the commercial, they put the footage of this trial in there. So somebody made that connection.

It surprises me not at all that Mr. Rosenblatt would say that the motion is frivolous or cynical or calculated, or whatever other adverb or adjective that he wants to apply to it, but it is not. It has been a concern of this Court from the beginning,

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and the Court has been very careful with it and very sensitive about this issue.

There's a line that gets crossed somewhere, and that line is an important line. And the issue is whether we have crossed that line here. Because, as I said, you can talk about how much we have invested, and we do, but there's no more investment that we have than in the system working right and being fair. And that's my concern, too.

THE COURT: Okay. Do you want to comment at all about the article that appeared in today's paper regarding Travolta?

MR. HEIM: I accept Mr. Rosenblatt's representation 100 percent that he had nothing to do with the article, and I'm just going to hope that the jurors didn't see it. I know that Joe, the courtroom deputy, did everything he could to remove papers from the jurors this morning.

THE COURT: Yes. He asked me about confiscating any of the paper from them, and I told him go ahead and take that section out, which he did. Whether the jury saw it before, whether they'll see it after, that I can't tell you.

Okay. Ms. Clerk, this Miami Herald, Sunday edition of the Business section, will be put in the

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record.

Can I have that other thing back so we can keep it for the record?

And that's today's Herald, and also the Business section, and we'll keep that for the record.

Okay. I'll bring the jury out and I will question them to see what it is that they may have been aware of.

MR. NEWSOM: Your Honor, would you like to see the tapes first?

THE COURT: Yes, I forgot about that. Yes. You have a machine back there?

MR. ROSENBLATT: Judge, I want to make sure there's no confusion. Mr. Heim was talking about a few things. Apparently, he was talking about a promo for this Superbowl ad, which appeared on some local stations, but I assume it's very clear that the Superbowl ad showed no reference to this trial.

THE COURT: Well, we'll see the ads.

MR. ROSENBLATT: It just showed Tisch and Waxman. Did not show this trial.

THE COURT: As long as we have the video equipment, which is now being brought forward.

Joe, go in there and tell them that we'll be somewhat delayed.

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MR. HEIM: In fact, it is not a promo for the Superbowl commercial; it is the local news media taking note of it and then making it into a news story. That's what it is.

THE COURT: Whatever. I'm sure that neither side had any control over what the news media did.

MR. NEWSOM: Your Honor, we just remind you that Andrew Tisch's testimony was read to the jury. So he is a witness in this case.

THE COURT: Who is the other person you made reference to?

MR. HEIM: William Campbell, who testified by deposition.

THE COURT: That was not the one who testified during Superbowl halftime?

MR. ROSENBLATT: That was only Tisch.

MR. NEWSOM: When you see the tape from the T.V. station, you'll see that the Tisch part is two different parts. But when it's shown in the Superbowl, it's shown all together and it has Congressman Waxman's questions.

THE COURT: How did you come by the tapes for Thursday?

MR. MOSS: Say that again, sir? I'm sorry.

THE COURT: How did you come by the tapes for

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Thursday?

MR. MOSS: I had someone --

THE COURT: Did you know about it in advance?

MR. MOSS: No. There's a service called Broadcast Quality that tapes everything. And we had someone go to them Friday -- remember I told you we were looking for it? And so Friday afternoon we got it.

THE COURT: You mean there's a service that tapes everything on T.V. and keeps them forever?

MR. REID: Well, they keep them for a period of time. You can call them and tell them the subject matter.

THE COURT: This says Channel 2, whatever that is, but that's your channel.

(The videotape was played as follows:)

>> Jen and Tony, the advertisers love the millions of us who don't have tickets to the big game. And to get their message across, they use flashy ads with bold messages. Well, the State of Florida is just one advertiser jumping into the mix. New antitobacco ads that lash out and ridicule tobacco executives.

>> ...whether cigarette smoking causes cancer? Your answer was, quote, I don't believe so. Do you stand by that answer today?

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>> I do, sir.

>> Florida's latest antismoking spots make a laughing stock of the tobacco industry's chief executives. Paid for by the state's landmark tobacco settlement, the 30-second commercials will debut on Superbowl XXXIII all over the state. Their main target audience, teens. On the hot seat in this ad is a Philip Morris executive.

>> If you had a choice as a parent, would you have your daughters start cigarette smoking?

>> I can't make the choice for my daughter and that's all I can tell you.

>> These bold, very embarrassing ads are a breakthrough for Florida's antismoking truth campaign. Previous ads were not allowed to attack executives or name tobacco companies, but an adjustment in the state's now $13 million plus settlement gave the group the go-ahead to point fingers to get its point across.

>> We have looked at the data and the data that we have been able to see has all been statistical data that has not convinced me that smoking causes death.

>> (Laughter)

>> These ads will only b s en in the State of Florida. The state bought $185, worth of air

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time on Superbowl Sunday. Last year the Speak the Truth campaign spent $1.6 million in advertising.

Jen and Tony, back to you in the stadium.

(The videotape was concluded.)

MR. NEWSOM: That was Thursday night.

MR. REID: That's January 29th?

VIDEOGRAPHER: January 29th.

MR. REID: Good. That's the next one.

(The videotape was played as follows:)

>> You're watching WTVJ NBC 6.

>> Well, football fans are counting down to the kick-off, others can't wait to get a glimpse of the new commercials. And South Florida has the right game plan. It's using that time to launch its own new antitobacco ads. NBC 6 reporter Nicki Mohan has details.

>> You were asked whether cigarette smoking causes cancer. Your answer was, quote, I don't believe so. Do you stand by that answer today?

>> I do, sir.

>> Florida's latest antismoking spots make a laughing stock of the tobacco industry's chief executives. Paid for by the state's landmark tobacco settlement, the 30-second commercials will debut on Superbowl XXXIII all over the state. Their main target

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audience, teens. On the hot seat in this ad is a Philip Morris executive.

>> If you had a choice as a parent, would you have your daughter start cigarette smoking?

>> I can't make the choice for my daughter and that's all I can tell you.

>> These bold, very embarrassing ads are a breakthrough for Florida antismoking truth campaign. Previous ads were not allowed to attack executives or name tobacco companies, but an adjustment in the state's now $13 million plus settlement gave the group the go-ahead to point fingers to get its point across.

>> We have looked at the data and the data that we have been able to see has all been statistical data that has not convinced me that smoking causes death.

>> Nicki Mohan today in South Florida.

>> They are funny, aren't they? These ads will only be seen in Florida, too bad. The state bought $185,000 worth of air time for Superbowl Sunday. Last year the truth campaign spent a total of about $8.6 million in similar kind of advertising, with the hoods.

>> They are funny, that's for sure.

(The videotape concluded.)

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THE VIDEOGRAPHER: This is tape number 3.

(The videotape was played as follows:)

>> You were asked whether cigarette smoking causes cancer. Your answer was, quote, I don't believe so. Do you stand by that answer today?

>> I do, sir.

>> Do you understand how isolated you are from the entire scientific community?

>> Well, we have looked at the data and the data that we have been able to see has all been statistical data that has not convinced me that smoking causes death.

>> (Laughter)

(The videotape was concluded.)

MR. REID: Your Honor, just for the record, the last one was the one shown during the game.

THE COURT: I understand. Okay.

MR. ROSENBLATT: Well, incredibly, the news report said, "An adjustment in the settlement," quote.

THE COURT: I was wondering if we had the script of that.

MR. ROSENBLATT: An adjustment in the settlement allows you to do that.

MR. HEIM: I have no idea, Your Honor, what that is making reference to. That's some news

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reporter's interpretation of something or other that I haven't a clue about.

MR. MOSS: If we can, Your Honor, we'll provide the Court with copies of these and we'd like to have them marked.

THE COURT: Sure. If we can get a transcript of the content of the tapes, I'd appreciate that, also.

I think what we better do -- are we going to have a video deposition for the jury today?

MR. ROSENBLATT: Yes. We have Dr. Houston.

THE COURT: Might as well leave the machine.

Let's get the jury out.

MR. HEIM: Your Honor, do you want to question them individually rather than as a group?

THE COURT: No. We'll see what happens. Going to play it by ear, I guess.

(The jurors entered the courtroom.)

THE COURT: Well, good morning, folks. Did you all have a big weekend? All Superbowled out?

How many watched the game? Almost all of you watched the game.

How many watch football during the year normally?

Most of you do.

The question I think we're all concerned

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about is whether, during the course of your watching television over the weekend, any of you happened to come across, see, hear or been exposed to anything from T.V., newspapers, radio, any other source, regarding tobacco lawsuits or anything related to it.

How many can answer that question?

JUROR 729: I did.

THE COURT: Okay. Specifically around halftime, anybody see anything on TV around halftime?

So a lot of you have.

Let me ask you this: We had told you in the beginning of this case that because of the nature of the case and the length of the case, that it would be critical for you folks to follow the rules of court regarding not going outside the courtroom for any information regarding the case.

Now, we can't control the world. We can control certain parts of it and we can hope that you folks would rely and comport with the rules of court in not intentionally looking at any material that isn't presented to you in court. It becomes very critical.

So, I think because of what's been occurring lately, and I've alluded to this before, some newspaper stuff and some television stuff, that I'm going to have to talk with you individually about that to see where

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we go.

If you don't mind, folks, I'm going to have you back in the jury room and we'll call you out one at a time and we'll discuss this a little bit further.

(The jurors exited the courtroom.)

THE COURT: All right. We'll take all 16 up one at a time.

MR. ROSENBLATT: Although, only, I believe, two indicated that they --

THE COURT: Well, it was more than that. We had two here and two over here.

Bring them out one at a time, starting with Number 1.

(Juror No. 580 entered the courtroom.)

EXAMINATION OF JUROR 580

BY THE COURT:

Q. Hi, how are you doing today? You are the Number 1 seat. What is your juror number?

A. Number 1, I mean 580.

Q. We'd like to know what, if anything, you happened to see over the weekend either in the newspapers -- and let's start, say, from Thursday through this morning?

A. Nothing.

Q. Regarding anything relating to tobacco or

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anything else?

A. No, nothing.

Q. Nothing at all?

A. No.

Q. Did you read the Herald?

A. No. I was sick in bed.

Q. You were sick in bed?

A. Yes.

Q. Were you watching T.V.?

A. Yeah, but I didn't see any news.

Q. Did you watch the T.V. news in the morning on Thursday -- what channel do you watch, by the way?

A. I see many. Channel 2, 3, Channel 7.

Q. Did you happen to see the Superbowl game?

A. No.

Q. You didn't look at it at all?

A. Just little bit parts of it.

Q. And you didn't see anything at all, either during the game or halftime, that had anything at all to do with any of the related issues concerning tobacco?

A. No.

Q. If you do come across some information, because people talk and all sorts of things happen, can you assure this Court that it will not encroach upon or

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affect the way you view this case or reach any decision regarding this case?

A. Uh-huh.

Q. It's important to both sides.

A. Yes.

Q. Can you give us that assurance?

A. Yes.

THE COURT: Any questions from either side?

MR. HEIM: I have no questions.

THE COURT: Please, don't discuss this with the other jurors when you go back.

The next one, please.

(Juror 580 exited the courtroom.)

MR. MOODHE: Your Honor, can I just make a suggestion for one additional line of questioning? People who haven't themselves watched the game, they may have been in a household where they were watching, a party. If you could ask them if anybody mentioned having seen it.

THE COURT: That's why I asked the question: You may come across that information.

(Juror No. 577 entered the courtroom.)

EXAMINATION OF JUROR 577

BY THE COURT:

Q. Okay. How are you, sir?

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A. Pretty good.

Q. I'm trying to get your juror number, which I can't remember.

A. 577.

Q. Okay. Did you happen to watch the Superbowl game?

A. Yes.

Q. Did you happen to see anything on T.V., during the course of watching it, which in any way touched on the issues of tobacco or any related matters that we have here?

A. No, not that I know of. I didn't watch all of it.

Q. Didn't watch all of it. Especially during the halftime?

A. No. I didn't see the halftime.

Q. How about on Thursday, Friday, Saturday and even Sunday, on either television or newspapers, did you happen to see or come across anything that would in any way relate to tobacco?

A. The only thing, one day, whenever we took the local, there was a headline, some Venezuela big tobacco. And I didn't read it.

Q. So you at least read the headline?

A. Yes. I seen the headline.

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Q. Didn't read the story?

A. No.

Q. Has anybody talked to you about anything that may have been shown on T.V. or written in the newspapers since Thursday through this morning?

A. I didn't --

Q. Either at home, while you're watching the game, or whatever, since the game, any conversations by anybody?

A. I ain't really seen nobody. Been home mostly sick.

Q. If any of this information comes to your attention, either in stuff that may appear on T.V. or may appear in the newspapers, or even through conversations with your friends and family, can you assure this Court and these folks here that it will not interfere with or have any effect upon your impartial decision in this case?

A. Yeah. I can assure them that.

Q. We're going to get deluged with a lot of information, a lot of stuff. And we want to make sure that we can find that information only from this courtroom and nowhere else.

Can you do that and assure us that you'll be impartial?

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A. Yes. Judge, one way or the other, I'm just listening to what's --

Q. Well, I don't want you to be influenced by any outside source, and I don't know where, if any, information you get from any outside sources, and we're trying to find out if you did over the weekend get any information. Shaking the head no.

THE COURT: Any other questions?

Thank you very much, sir, and please don't discuss this with the other folks when you go back in.

(Juror 577 exited the courtroom.)

THE COURT: I don't want to allude to a commercial if they had not seen it. No sense letting them think about something.

(Juror 614 entered the courtroom.)

EXAMINATION OF JUROR 614

BY THE COURT:

Q. And your number is what, sir?

A. 614.

Q. What we'd like to know is, trying to get your memory back, say, from Thursday through this morning, whether you've seen anything in newspapers, television or any other means of communication that had any contact with or association with tobacco or anything like that, including watching the Superbowl?

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A. I watched the Superbowl, but I didn't see anything.

Q. Did you watch the halftime show?

A. Some of it. I was baby-sitting, got a two-year-old.

Q. Come halftime, what happens, you get up and go to the kitchen?

A. She's moving around.

Q. Has anybody discussed this with you, have you talked about it with anybody, anybody brought it to your attention of anything that may relate to tobacco or things of that nature?

A. No. I didn't see anybody this weekend. I was home all weekend.

Q. Well, I was just wondering about being home and watching T.V. or reading the newspapers?

A. Well, I don't watch the local T.V. Out of Denver I watch the game, satellite T.V.

Q. If, by chance, anybody starts to talk to you, and I don't know if they will or they won't, or something is shown on T.V. or produced in the newspaper that you've seen that we don't know about, and hasn't even happened yet, but might, you know, we tried to instruct you not to look at it?

A. Right. If I see the headline, I'll put it

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away. I won't read it.

Q. Have you seen any headlines recently?

A. Since the trial started I've seen headlines, but I didn't read the article.

Q. Whatever it is that you did see, would it in any way affect your impartiality in this case?

A. Once I see tobacco, I just don't read any more.

Q. Can you assure both sides here and the Court that whatever decision you do make in this case will be based only on what you have heard in this courtroom?

A. Yes, I think I can.

THE COURT: Any other questions?

MR. ROSENBLATT: No, Your Honor.

MR. HEIM: No, Your Honor.

THE COURT: Don't discuss this with the other people.

(Juror 614 exited the courtroom, and Juror 622 entered the courtroom.)

EXAMINATION OF JUROR 622

BY THE COURT:

Q. How are you today?

A. Good.

Q. You were one of those folks who said you watched the Superbowl?

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A. Yes, I did.

Q. Is there anything you recall, from your experience watching the Superbowl, that may have any connection with tobacco?

A. No. You had mentioned during halftime. I was out during halftime, so I missed that.

But you had asked had we seen anything on T.V. during the weekend. I did see like a commercial, antitobacco-type commercial.

Q. And basically did you see the whole thing?

A. Of the commercial?

Q. Yes.

A. Yes.

Q. Do you know what channel you were watching when you saw that?

A. No, no idea. Might have been 5.

Q. Do you know what day that was when you saw it?

A. I think it was Saturday. I'm not sure.

Q. That commercial that you did see, had you ever seen it before, say, prior to Saturday?

A. Yes. I had seen this -- I can tell you basically, instead of questions, I've seen about two commercials, and it's the same commercial both times. One time I went to a movie and they played the same

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commercial before the movie.

Q. In the movie theater?

A. They did. It was like an Academy Awards-type presentation where they were lining up the biggest killers, quote, unquote, of the year, and tobacco industry wins the academy award for it. And when I saw it it caught me completely by surprise because we were sitting at the movie. Same exact commercial that I saw this time through.

And beyond that I saw that one billboard -- two billboards that pop to mind that I've seen. One was like a score board, Tobacco versus Murder. I forget the numbers, but they put it up. And the other was a billboard, an older gentleman like in a bikini, and that said the tobacco industry hides behind models because they look like that. But beyond that, I read primarily sports.

Q. Those are the commercials you're talking about?

A. That's it. That's what I've seen the entire time.

Q. All the things that you have been exposed to, put it that way, has that in any way affected your impartiality as it may relate to your job in this case?

A. No. This is stuff that I obviously have been

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exposed to prior to this case as well.

Q. Do you feel that it would affect your ability to, say, exclude it and render a fair and impartial verdict?

A. No, sir. I believe I'm still impartial.

Q. Because it's important to both sides that you not be influenced by anything outside. Of source, we live in a modern society, mass communication, and we can't control everything.

A. I've done my best to avoid it, like I said, driving down 95.

Q. Then you go to the movies and see something on the screen?

A. Sure.

Q. And that's as far as your fund of knowledge goes regarding this kind of a thing?

A. Yes, sir.

THE COURT: Any questions?

MR. ROSENBLATT: No.

MR. HEIM: No.

THE COURT: Thank you very much. Please don't discuss this with the folks inside.

(Juror 622 exited the courtroom.)

MR. ROSENBLATT: I would just make this comment. In his answer, he just said: Of course, I

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was exposed to this, a lot of this stuff --

THE COURT: Hold on.

(Juror 459 entered the courtroom.)

THE BAILIFF: Number 5, 459.

EXAMINATION OF JUROR 459

BY THE COURT:

Q. You watched the Superbowl?

A. Uh-huh.

Q. And I want to know that during the time that you watched the Superbowl, did you see anything on the screen that had any relationship to tobacco at all?

A. I think it was halftime I saw some ad. I didn't pay too much attention to the details of the ad. But what I vaguely remember is somebody sitting in front of someone asking a question. I saw there Waxman. And then I didn't pay too much attention to the details of the question, and I heard something about addiction and then a laughter in the background, and that's it.

Q. Was that the first time you had seen that?

A. First time I saw that.

Q. Did you see it again any other time?

A. No.

Q. Have you since, say, Thursday of last week through this morning, seen anything in the newspapers

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or on T.V. or heard anything on radio or even if you went to a movie theater?

A. Nothing.

Q. Relating to tobacco?

A. No.

Q. The fact that you did see whatever was aired during the halftime, will that in any way affect your impartiality of this case?

A. I think not. I think not.

Q. Because, as I said, I can't insulate you from life's experiences, but I do feel that you understand the importance of what you hear and see regarding this case should be decided only on what you hear and see in this courtroom.

Can you assure both sides that even though you did see this and were exposed to whatever it was that they showed, that it will not affect your impartiality?

A. That's correct.

Q. Because if it will, we'd like to know.

A. No. I don't think it will affect my impartiality one bit.

THE COURT: Anybody?

MR. HEIM: No, Judge.

MR. ROSENBLATT: No questions.

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THE COURT: Please don't discuss this with the other folks in the room.

(Juror 459 exited the courtroom.)

THE BAILIFF: Juror Number 6, Jury Number 331.

EXAMINATION OF JUROR 331

BY THE COURT:

Q. Okay. How are you today, ma'am?

A. Fine, thank you.

Q. Did you raise your hand as one of those folks who watched the Superbowl?

A. No.

Q. Don't like football?

A. No.

Q. Anybody in the household watch the game?

A. No.

Q. Have you seen anything in the newspapers or on T.V. or magazines or heard anything on radio, or even having gone to the movies seen anything which in any way relates to tobacco, the items that we're discussing?

A. No.

Q. Did you go out of the house over the weekend?

A. I went out for a while Saturday and no place yesterday. Didn't go out the door.

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Q. So you haven't seen anything either in the newspapers or on T.V.?

A. Don't get the newspaper at home either.

Q. Do you watch T.V.?

A. Sometimes basically old movies.

Q. Old movies?

A. Yes.

Q. They're the better ones, aren't they?

A. Yes.

Q. Do you still feel that you are impartial, as you sit here as a juror, throughout the course of this trial?

A. Yes.

THE COURT: Any questions?

MR. ROSENBLATT: No.

MR. HEIM: No, Your Honor.

THE COURT: Thank you very much, ma'am, and please don't discuss this with the other folks inside.

(Juror 331 exited the courtroom.)

THE BAILIFF: Juror Number 7, jury Number 360.

(Juror 360 entered the courtroom.)

EXAMINATION OF JUROR 360

BY THE COURT:

Q. How are you today?

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A. Fine.
Q. Did you watch the Superbowl?
A. I did.
Q. Did you see the whole thing from start to finish?
A. Not really. I was backwards and forwards.
Q. Did you see anything during the course of the Superbowl presentation that had any relationship to tobacco?
A. I sure didn't.
Q. Did you watch the halftime?
A. Part of it. I only saw Stevie Wonder. That's it.
Q. Nothing else comes to mind?
A. No.
Q. Since Thursday, we'll say to now, because that's a long time, have you seen anything on T.V. or in the newspapers or heard anything on the radio or anything in magazines or even at the movie theaters, if you went to the movies, that had anything at all to do with tobacco, tobacco issues?
A. No.
Q. Articles in the newspaper or anything on T.V., news broadcasts?
A. I rarely read the newspapers anyways.

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Q. Rarely?
A. Right.
Q. As far as T.V., do you watch news programs?
A. Sometimes, if I'm not moving around. I move around a lot.
Q. Nothing comes to mind about any of the issues?
A. Nothing.
Q. Can you assure these folks that you are still impartial as it relates to this case, and whatever it is you may have been exposed to, if you were at all, will not affect your impartiality?
A. Nothing.
THE COURT: Questions?
MR. ROSENBLATT: No, Your Honor.
MR. HEIM: No.
THE COURT: Please don't discuss this with the folks in the other room.
(Juror 360 exited the courtroom.)
THE BAILIFF: Juror Number 8, Jury Number 788.
(Juror 788 entered the courtroom.)

EXAMINATION OF JUROR 788

BY THE COURT

Q. Have a seat, sir. How are you today?

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A. Okay.
Q. Did you watch the Superbowl?
A. Yes, sir.
Q. Did you watch the whole thing?
A. Bits and pieces.
Q. How about halftime, did you watch the halftime?
A. I saw, yes, I saw some of it. I was at a bar.
Q. Did you see anything on T.V., while you were watching, that had anything to do with tobacco or any of the issues we're talking about?
A. I don't know if it was during the Superbowl, but some time this weekend I saw part of a commercial.
Q. Do you recall what station you were watching?
A. I don't know.
Q. Do you recall a commercial or the content?
A. I don't know what day it was. I think it was yesterday. Something -- a guy was sitting at a desk. He had curly hair. That's all. I wasn't really paying attention, but that's the most I recall.
Q. Did you listen to it?
A. No, I did not. I was at a crowded -- I think it was last night at the bar. We couldn't hear it.
Q. So in a bar watching the game?

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A. Yes.
Q. Was it after the game or during the game?
A. I don't even know if it was yesterday. I just remember that's what I saw.
Q. Do you normally watch T.V. news? And if so, what channel do you watch?
A. I usually watch I guess Channel 7.
Q. 7?
A. Yes.
Q. Have you seen anything in the newspapers or magazines or heard anything in radio or anything since, say, last Thursday through today?
A. No, sir. I only read the paper when I'm here. I don't get it at my house and Joe usually takes everything away.
Q. Is there anything about any of this commercial that you may have seen, or whatever it might have been, which in any way would affect your ability to be impartial in this case?
A. No, sir.
Q. Can you assure both sides that you will remain impartial throughout the course of this trial?
A. Yes, I can.
MR. ROSENBLATT: No questions.
MR. HEIM: No questions, Your Honor.

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THE COURT: Please don't discuss this with the folks inside.

(Juror 788 exited the courtroom.)

THE BAILIFF: Juror Number 9, Jury Number 684.

EXAMINATION OF JUROR 684

BY THE COURT:

Q. How are you today, ma'am?

A. I'm fine.

Q. Did you watch the Superbowl?

A. Some of it.

Q. Not all of it?

A. No, because my dad was home. So I was hosting.

Q. He was watching and you were working?

A. Yes, I was working.

Q. Did you see anything, during the course of the Superbowl presentation on T.V., that had any connection at all with any issues in tobacco?

A. No, I didn't.

Q. Halftime or otherwise?

A. No.

Q. Have you seen anything since, let's say, Thursday through today, either in newspapers or on T.V., that had anything to do with tobacco?

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A. No. I don't read the paper.

Q. When you watch news programs on T.V., what channel do you watch?

A. I'm into cable.

Q. So you watch cable channels?

A. Yes, movies.

Q. How about news programs, do you watch news programs?

A. No.

Q. So is there anything that would have affected your impartiality in this case that you would have been exposed to, say, Thursday through today to this morning?

A. No.

Q. Can you assure these folks that you are impartial and will remain so throughout the course of this trial?

A. Yes.

THE COURT: Questions?

MR. ROSENBLATT: No questions.

MR. HEIM: No questions.

THE COURT: Thank you. Let's not discuss any of this with the folks inside. Thank you.

(Juror 684 exited the courtroom.)

THE BAILIFF: Juror Number 10, Jury Number

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729.

(Juror 729 entered the courtroom.)

EXAMINATION OF JUROR 729

BY THE COURT:

Q. How are you today, sir?

A. Good morning. How are you?

Q. Did you watch the game?

A. Yes, sir. Part of it. I didn't get a chance to watch it all.

Q. Why not?

A. Well, I went home.

Q. While you were watching the game, did you happen to see on T.V. anything that may have related to any tobacco or tobacco issues?

A. No, I didn't.

Q. Did you discuss it with anybody; somebody else talk about it?

A. No. I happened to watch it alone. I didn't have company. I didn't have a Superbowl party.

Q. Have you seen anything in the newspapers or heard anything on the radio or watch anything on T.V. since Thursday?

A. No, I haven't.

Q. Up through today?

A. No, sir.

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Q. That has anything to do with tobacco?
A. No, sir.
Q. Is there anything that you may have been exposed to that brings to mind that would in any way affect your impartiality in this case?
A. No, sir.
Q. Can you assure both sides here that you will remain impartial throughout the course of the trial?
A. Yes, sir. Yes, sir.
THE COURT: Questions?
MR. ROSENBLATT: No questions.
MR. HEIM: I have none, Your Honor.
THE COURT: Thank you very much. Don't discuss this with the other folks.
(Juror 729 exited the courtroom.)
THE BAILIFF: Juror Number 11, Jury Number 798.
(Juror 798 entered the courtroom.)
EXAMINATION OF JUROR 798
BY THE COURT:
Q. How are you today?
A. Fine.
Q. You look like you're cold. Are you cold?
A. I'm always cold.
Q. Were you one of those folks who said they

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watched the Superbowl?

A. No. I didn't watch it at all.

Q. Was anybody in the house watching it?

A. No. I wasn't home to watch it.

Q. Well, I mean, wherever you might have been?

A. Church.

Q. Have you seen anything in the newspapers or magazines or on T.V. or wherever from, including movie theaters and all, since, say, Thursday of last week through this morning which in any way touched on the issue of tobacco or tobacco-related matters?

A. No, not that I remember.

Q. And if you did see anything, would it affect your impartiality in any way?

A. I watch very little T.V., Your Honor.

Q. How about the newspapers?

A. I seldom read the newspapers. I'm not a reader.

Q. Where do you get your information about daily activities?

A. I hear people talking. Conversations.

Q. So as far as you're concerned, can you assure these folks out here that you are impartial and will remain impartial throughout the course of this trial?

A. Yes, I will.

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THE COURT: Questions?

MR. ROSENBLATT: No questions.

MR. HEIM: I have no questions, Your Honor.

THE COURT: Thank you very much. Please don't discuss this matter with anyone inside.

(Juror 798 exited the courtroom.)

THE BAILIFF: Juror Number 12, Jury Number 805.

(Juror 805 entered the courtroom.)

EXAMINATION OF JUROR 805

BY THE COURT:

Q. How are you today?

A. I'm fine. How are you today?

Q. Did you watch the game?

A. Yes, off and on.

Q. Do you remember seeing anything during the course of the game relating in any way to tobacco or tobacco issues of any type?

A. No.

Q. During the game or at halftime?

A. No, because I was also up doing housework. So I was kind of watching off and on.

Q. Has anything come to your attention, even if you didn't see it, from anybody who might have seen the game, regarding any of these issues?

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A. No.

Q. Have you read anything in the newspapers, say, since last Thursday, because we haven't seen you since then I guess until now, through this morning?

A. No.

Q. Regarding anything relating to tobacco or issues that we're talking about?

A. No. I haven't looked at a paper.

Q. Haven't looked at a paper?

A. No. I quit my newspaper when the trial started. I thought I wouldn't take a chance that way.

Q. Has anything occurred or been exposed to information to anything which would affect your impartiality in this case?

A. No.

THE COURT: Any questions?

MR. ROSENBLATT: No questions.

MR. HEIM: No questions.

THE COURT: Thank you, ma'am. Don't discuss this with the folks back in the room.

(Juror 805 exited the courtroom.)

THE BAILIFF: Juror 13, Jury Number 822.

(Juror 822 entered the courtroom.)

EXAMINATION OF JUROR 822

BY THE COURT:

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Q. How are you today, sir?
A. Great. I have the sniffles, but.
Q. Hopefully you can take a couple of aspirin, call me in the morning.
A. All right.
Q. Did you watch the game?
A. Yes. I watched the game.
Q. Did you watch it all the way through?
A. Parts of it. My power went out a couple of times.
Q. No kidding. Where?
A. Liberty City area.
Q. Power went out in the middle of the game?
A. Three times.
Q. I suppose everybody was just joyous about that. When it went out, how long did it stay out?
A. First time, about five minutes; second time, in and out.
Q. I mean, it wasn't a long, extended time?
A. Yes. It was all in the first quarter.
Q. So you did see the second quarter, halftime, and the rest of it?
A. Right.
Q. Is there anything that you remember seeing, during the course of the time that you did watch it,

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that in any way related to tobacco?

A. Yes.

Q. What did you see?

A. I believe it was the first commercial was a tobacco commercial.

Q. Did you watch it?

A. No. I turned the T.V. off.

Q. It was short, relatively short period of time?

A. I don't know how long it was because I turned it off.

Q. Did you see anything either -- let's say Thursday -- last time we talked to you all was Thursday or Wednesday, I can't remember -- Thursday, from Thursday until this morning, have you seen anything in the newspapers or heard anything on T.V. or radio that had any relationship to tobacco?

A. No. I haven't seen anything in the paper.

Q. Has anybody talked to you about this commercial that you saw on T.V. since the time that you saw it?

A. No one.

Q. Discuss it or anything?

A. No.

Q. Do you have any idea what the commercial

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said? I know you said you turned it down.

A. No. When it came on and I knew it was about tobacco, I turned the T.V. off.

Q. So regardless of what it was that you did see that you may have been exposed to, do you still remain impartial in your view of this case?

A. Yes, sir.

Q. You assure the folks here that you will remain impartial throughout the course of the trial?

A. Yes, sir.

THE COURT: Any questions?

MR. ROSENBLATT: No questions.

MR. HEIM: No.

THE COURT: Please don't discuss this matter with the other folks. Thank you.

(Juror 822 exited the courtroom.)

THE BAILIFF: Juror 14, Jury Number 831.

(Juror 831 entered the courtroom.)

EXAMINATION OF JUROR 831

BY THE COURT:

Q. How are you today?

A. Fine.

Q. Did you watch the game over the weekend?

A. The first quarter.

Q. Only the first quarter. Then what happened?

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A. I didn't watch it no more.

Q. You got tired. Anybody in the house watch the game?

A. Yes.

Q. So the T.V. was on during the time you were there?

A. Yes. Not in my room, in the front room.

Q. So you didn't hear what was going on?

A. No.

Q. Has anybody talked about anything that they watched during the course of the game?

A. No.

Q. Have you seen anything on T.V. or the newspapers, say, since last Thursday?

A. No.

Q. About tobacco or any related issues?

A. No.

Q. Do you watch television news?

A. No. I don't watch the news that much. Depressing.

Q. How about read the newspapers?

A. I don't read the newspaper that much either.

Q. So since Thursday until now, you don't remember seeing anything or hearing anything at all about tobacco or tobacco-related issues or anything of

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that nature?

A. No.

Q. Do you still remain impartial, regardless of maybe you heard something that registered in your mind, do you still remain impartial in this case?

A. Yes.

THE COURT: Any questions?

MR. ROSENBLATT: No questions.

THE COURT: Thank you, ma'am, very much. Don't discuss this with the other folks.

(Juror 831 exited the courtroom.)

THE BAILIFF: Juror 15, Jury Number 860.

(Juror 860 entered the courtroom.)

EXAMINATION OF JUROR 860

BY THE COURT:

Q. How are you today?

A. Fine. Thank you, sir.

Q. Did you watch the Superbowl?

A. No, sir. It was an opportunity to get rid of my husband for a little while so I can study. That's all I did this weekend.

Q. What are you studying?

A. Business management courses. I went back to school.

Q. So he watched the game and you studied?

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A. Yes, sir.

Q. Did you hear anything at all about what was going on with the Superbowl or halftime or anything else?

A. I had 12 chapters to do and I have an exam tomorrow.

Q. You do? When? Oh, that's right. You're off tomorrow.

A. In the evening.

Q. Good. I hope you succeed very well in that.

Have you seen anything in the newspapers or seen anything on T.V. since, say, Thursday?

A. I haven't been reading the paper at all.

Q. Anything on T.V. that brings to mind news programs or anything that has any contact with tobacco issues?

A. No, sir. I saw four walls this weekend and 12 chapters; that's it.

Q. Okay. So if you had been exposed inadvertently, that you may not be aware that you don't recall at the moment, would that in any way affect your impartiality in this case?

A. No, sir.

Q. You still remain impartial?

A. Yes.

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THE COURT: Any questions?

MR. ROSENBLATT: No questions.

MR. HEIM: No.

THE COURT: Thank you, ma'am. Don't discuss this with the folks in the other room.

(Juror 860 exited the courtroom.)

THE BAILIFF: Juror Number 16, Jury Number 907.

(Juror 907 entered the courtroom.)

EXAMINATION OF JUROR 907

BY THE COURT:

Q. How are you today?

A. Morning.

Q. Did you watch the game?

A. Yes, I did.

Q. The whole thing?

A. Whole thing.

Q. Start to finish?

A. Except for bathroom and refreshment breaks.

Q. How about halftime?

A. Yes.

Q. Did you see anything while you were watching the game on T.V. that had any contact with or relationship to tobacco issues?

A. I started seeing the beginning of a

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commercial, at which time I said maybe it's time to go to the kitchen and get something. So I saw a little bit of the beginning.

Q. Do you recall any words or comments?

A. Just from what I saw, it looked like a Congressional hearing with one of the -- I think a CEO of one of the tobacco companies. I'm not sure which one. Then I said, let me go get something; I shouldn't be watching this.

Q. Did that affect you in any way, whatever it was you did hear, and I don't know if you heard the whole thing or just a snippet, but assuming anything you did hear, would it affect you in being an impartial and fair juror in this case?

A. No, it would not affect me.

Q. Have you seen anything in the newspapers or on T.V. or heard anything on radio or whatever, even in the movies if you go to the movies, that had any contact or connection with tobacco issues?

A. You know, it's extremely hard to avoid everything that's out there. And I tried not to read it or see it. Sometimes -- like I'm interested -- it was last week with the State of the Union address. It's very difficult to avoid anything, but it will not affect myself as far as any decisions or whatever is

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the outcome here. So I could definitely block it out.

Q. You realize that's not evidence?

A. Yes.

Q. And that would be true with anything else you may have heard or seen either since then or even coming up in the future?

A. Yes.

Q. And you can remain impartial?

A. Yes, sir.

THE COURT: Questions?

MR. ROSENBLATT: No questions.

MR. HEIM: No questions.

THE COURT: Don't discuss this with the folks in the other room, please.

(Juror 907 exited the courtroom.)

THE COURT: Okay.

MR. ROSENBLATT: Well, I think your questioning of the jurors indicates there's no problem. No problem whatsoever. And that's what I said at the beginning. We dignify every motion. They got what they wanted. You questioned the jurors and obviously there's no problem.

A couple of people have said obviously, as Your Honor has said, we can't control the world. You see things. But every indication from this jury,

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Judge, is they have followed your instructions. They see a headline about tobacco, they don't read it; they see something about tobacco on television, they leave the room. They are following your instructions and it's a very compliant jury.

MR. HEIM: Your Honor, you know, it's real easy for Mr. Rosenblatt to say it's no problem. Everything is no problem for him when he thinks he's got things going his way; it's not a problem.

I think this last juror is an indication of the kind of problem that we do have when he mentioned the State of the Union address. He said he saw the beginning of the commercial.

I think it is -- I think it does reflect well on this Court and the way Your Honor has approached the seriousness of the matter with the jurors, because I think they do want to -- they understand the seriousness of it and they want to respond to Your Honor's directions. But I am and continue to be concerned about the cumulativeness of it. And I continue to be worried about it.

THE COURT: Okay. I've listened carefully to the jurors. I've watched them. I've evaluated their comments. Very few of them watched the game and were exposed to this commercial. Those who were exposed

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indicated they didn't watch it and were following the Court's rules.

Because I really do think that they understand and appreciate the seriousness of their duty. And they're following the Court's instructions. They even volunteer the fact that they see a headline and they don't read it.

What I was surprised about was something that they see in a movie, because we hadn't thought about that. But even then, this particular juror who did see it, had indicated that he was surprised about it. But regardless what it was that he saw, it would not interfere with or affect his ability to be impartial. And I think that is the theme throughout.

So I'm convinced that there's been no prejudice and I'll deny your motion.

MR. HEIM: Your Honor, if I may, I'd like to consider, I'd like to think about and perhaps raise by the end of the day, after I've thought about it some more, whether or not I want to ask the Court for some limited discovery into what the State of Florida is doing with its commercials. I haven't really thought about whether I want to do that or not.

But the reason that I might want to do it, and I just raise it for Your Honor to think about now,

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is that I really am worried about protecting what we're all trying to do here. And we're at a certain point now. We've had, as I've traced before and I won't repeat myself, all these public events, as some of which the jurors have seen and been exposed to. And I don't know whether there's any more. And maybe I have a responsibility to the Court to find out and see what it is in advance.

So I'm not making that request right now. But I would like to think about it.

THE COURT: I understand and I appreciate your thoughts. But also realize that this is the real world. We're not a sterile environment. Communication being what it is, mind set of the news media and people on T.V. being what that is, we're subjected to it. We have no control over it.

So we can only rely upon the good graces of the jury to follow the instructions of the Court, understanding the severity of the situation that they're in and the responsibilities they have. And I think that they've been exemplary up to this point. So I don't have any complaints with the jury at all.

Let's take a few minutes.

(A brief recess was taken.)

MS. BERGER: I'd like to hand you Lilly.

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We've reduced by about 80 percent the designations.

THE COURT: I got through 100 pages of -- what's the other lady's name? Henry? She just gave me Lilly to read.

MR. ROSENBLATT: But it's greatly reduced.

THE COURT: I said I started Henry. I got through about 100 pages and couldn't go any more than that. But we do have two that we can finish up today with.

MR. ROSENBLATT: The video is only about an hour.

THE COURT: I know, but I worry about how we're going to end up the rest of the day.

MR. ROSENBLATT: And Lisanti, which we've done, I don't think is terribly long.

THE COURT: Even assuming we do that today, we still have to worry about Wednesday.

MR. MOODHE: Your Honor, do I understand you were given designations with Carol Henry.

THE COURT: I was not given any designations on Henry. I started to read it just to get the flavor, because there's some motions.

MR. MOODHE: It's R.Y. Henry.

THE COURT: So I still have a problem with that one. And I just got designations, withdrawal of

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designations and crossdesignations on Lilly. I don't know if that means anything to anybody.

Let me understand the Lilly thing while I've got it. I've been flipping through it. What is it? How would I know what you withdrew?

MS. BERGER: It states in the first paragraph.

THE COURT: Other than the numbers. I mean by color.

MS. BERGER: That's a totally new color-coded copy. It zips from about Page 47 to 118.

THE COURT: That's fine. As long as the color-coding is new and fresh, then I can handle it.

MR. HEIM: What I'll have to do with it, Judge, Robin just handed me a copy. I'm going to have to look at it to make sure that the counterdesignations that she withdrew for us are what we would have withdrawn if we had done it.

THE COURT: Wait. She can't withdraw your counterdesignations. She can only withdraw hers.

MR. HEIM: But she did.

THE COURT: Well, you're not supposed to.

MS. BERGER: We withdrew their counterdesignations if we withdrew our designations.

THE COURT: That's still not your job to do

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it. If they wanted it in, they need to withdraw it. So you can't do it for them. So you'll have to go through this.

Okay. Let's do something.

I'll go over this Lilly thing, this testimony, and then if you have any additions, you just let me know.

MR. HEIM: All right. Thank you, Judge.

THE COURT: I have something ready to discuss. We still have to discuss Holbrook, which is not very long. Lisanti we have.

We talked about the Death in the West. We still haven't talked about that, but that's for tomorrow. And some motions.

Okay. We don't have really anything that we can present for the jury who are sitting there waiting.

Let's get the jury out.

(The jurors entered the courtroom.)

THE COURT: Okay. Another one of my usual apologies for being late. But we had a lot of stuff to talk about. We have a videotape deposition to show you.

This is which one?

MR. ROSENBLATT: Dr. Thomas Houston.

THE COURT: Dr. Houston. Okay. That's

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H-O-U-S-T-O-N?

MR. ROSENBLATT: Correct, just like the city.

THE COURT: All right.

(The videotaped deposition of Thomas P. Houston, M.D. was played as follows:)

Q. Okay. Dr. Houston, would you please tell the jury your full name and your present professional address?

A. I'm Dr. Thomas Price Houston. I'm director of the department of preventive medicine and environmental health at the American Medical Association in Chicago.

Q. You are an M.D.?

A. That's correct.

Q. A medical doctor. Okay.

What I plan on doing is eventually bringing you up to date as to when you began with the American Medical Association and what your function is there. But let me start at the beginning in terms of your educational background.

You received your undergraduate degree in biology and chemistry from the University of Mississippi; is that correct?

A. Yes.

Q. And tell us where you went to medical school

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and in what year you got your M.D. degree.

A. I got my degree in medicine from the University of Mississippi in 1977. And did a residency in family medicine at the University Hospitals there in Jackson, was chief resident and left the program in 1980, after which I was in solo private practice for a year in a small town south of Jackson, and then began a career of academic family medicine in a variety of university settings.

I started at the Ohio State University, went to Northern Georgia as part of the University of Georgia system in Rome, Georgia where I was associate director of a family medicine teaching program. And then went to the University of Kansas in Witchita where I was residency director in family medicine and associate of professor of family medicine. I left there in 1990 to come to my present position at the AMA.

Q. Okay. Now, in terms of your residency to become a specialist in the field of family medicine, how many years was that residency program?

A. Three years.

Q. What is the definition of family medicine? A doctor who's a specialist in family medicine does what?

A. Well, family medicine is a specialty that is

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the chief of the generalist specialties; that is, we don't make distinctions among the patients that we see based on their gender or their age. And are the specialty that most people think of when they think of Marcus Welby in taking care of a broad spectrum of patients both in the office and in the hospital, in nursing homes and home visits, and the broad base of American medicine.

Q. So family medicine would include little children through very old age?

A. Sure. We take care of people from the time they're born until the time they're buried and everything in between.

Q. Are you board certified in the field of family medicine?

A. I am.

Q. And what year did you become board certified?

A. In 1980, and then was recertified twice since then.

Q. Now, in your present position as director of the department of preventive medicine, when did the field of preventive medicine, I'm going to say, become popular? I don't really mean become popular, but when it became fairly well known, and which doctors decided to choose that as a specialty?

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A. Preventive medicine actually is a fairly small specialty from the point of view of numbers who practice it. I believe it's been certified by the American Board of Medical Specialties for 15 years or so. I don't remember the date exactly that the college was started.

And the physicians in preventive medicine do a lot of work in, just like the name sounds, health promotion and disease prevention, in occupational medicine, in aerospace medicine and other related branches that deal more with large population groups as opposed to individual patients.

Where that name comes into the department title that I have with the AMA is more really a bureaucratic function of the AMA as opposed to designating that people working in it have degrees in preventive medicine, but it's more a function of what our department does with regard to educating the public and physicians about a variety of subjects that deal with pre-investigation with environmental health and other issues such as that.

Q. Okay. Now, according to your resume', your curriculum vitae, it mentions you are a Fellow of both the American Academy of Family Physicians and the American College of Preventive Medicine.

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What does it mean to be a fellow in those organizations?

A. It means that one has achieved a level of distinction by education or by achievement in those particular disciplines to be nominated for and be elected a member or a Fellow of those colleges.

Q. Your curriculum vitae makes mention of your tobacco control smoking education activities.

First of all, tell us, the concept of smoking cessation means what?

A. The concept of smoking cessation means the ways that people stop smoking. In other words, people who begin to smoke can stop smoking, and we as physicians do everything we can to facilitate that process and to make it easy for people to stop.

And in that context, I've spent a good deal of time studying that particular subject in helping people understand the nature of tobacco use and how to quit, including educating the public about this, doing research on smoking cessation and how that works, and how it is that people begin smoking, and what factors lead to their ability to stop, and educating doctors about how they can help their patients stop smoking.

Q. Now, is this generally in a doctor-patient relationship, where a patient expresses a desire to

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stop smoking and can't without help, or is it the kind of situation where the doctor simply tries to persuade a smoker to quit on general health principles?

A. It's some of both. In general, we've come to the conclusion that in every encounter with people who smoke, it's the duty of the physician to bring up smoking as one of the chief avoidable causes of illness and death, and to remind the patient of this fact and to say to the patient in effect: As your doctor, the most significant step you can make in improving your health would be to quit smoking. Do you want to stop? And help the patient go through the steps that would allow him or her to quit smoking. And in general promote that behavior within the office.

But another part of that is general education of the public about smoking, about its hazards, about the consequences of tobacco use, and encouraging the public generally to stop smoking.

Q. Why is that considered so important?

A. Well, cigarette use and tobacco use is the leading cause of death in America. Over 400,000 people every year die from tobacco-related diseases. And as much as we can, preventing death from avoidable causes -- not that everybody in this room isn't going to die, but preventing death from avoidable causes is

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something that we feel is very important.

If one dies 10 or 15 years early, prematurely, and expends a lot of grief and money and personal family tragedy, if we can prevent that, then we should be all about that business, and that's what preventive medicine helps do.

Q. For how long a time have you been involved directly with tobacco control, smoking cessation, general issues relating to the subject of smoking and health?

A. Nearly 20 years. I began my work in that area as an interest in my residency program.

Q. Now, in terms of your present position as director of the department of preventive medicine and environmental health within the American Medical Association, how much of your time or how much of your focus is devoted to smoking and health issues?

A. I'd say about half my time.

Q. It's mentioned here in your resume' that you are one of about 12 faculty designated by the National Cancer Institute in their national training that train a series of seminars in smoking cessation. Could you explain that?

A. A few years ago the National Cancer Institute developed a series of training materials and other

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sorts of products that were designed to help doctors understand smoking better and help them do a better job of smoking cessation in their practices.

It was decided that the best way to get this information out to doctors was to train a group of physicians who would then go out to their local hospitals and medical societies and train other doctors.

So, I was asked by the National Cancer Institute to be one of the small group that would do the training sessions for people who would then go back to their hospitals and their local medical societies and train a wide number of doctors.

And I and 12 or 15 other physicians did this for a number of years for the National Cancer Institute. That program now has stopped and I suppose the last one of those lectures I did was about a year and a half ago.

Q. You were awarded the Surgeon General's medallion by then Surgeon General C. Everett Koop in 1988. What was that in recognition of?

A. In 19 -- let me get the year straight. In 1978, I first began working with an organization known as Doctors Ought to Care, which is a physician advocacy group in tobacco control. And I became one of the

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three individuals who were national leaders of that organization.

It achieved a lot in public education, in educating doctors about policy issues relating to smoking, and in bringing medical societies, organized medical groups, to understand more fully the problems of tobacco and health and how that could be -- how the damage due to tobacco's effects on health could be effected by the involvement of doctors and the involvement of medical societies in looking at how tobacco influences health.

For a period of 8 or 10 years, I suppose, we worked very hard at this particular issue, and Dr. Koop recognized the three of us that had formed this organization with this particular award, which is the highest award that the Surgeon General gives.

Q. Now, Dr. Houston, what do you say to those people who say, you know: Look, this is a free country. People can smoke or they can't smoke. Why is it really your business? Why do you get involved?

A. Well, that's an interesting point. A lot of people make a good deal of the choice to smoke and the right to smoke, without understanding the choice, that the choice to smoke is made by people who are 14, not by basically people who are 30 or 40.

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Q. You can continue your answer.

A. So that the reason it's important to do this education and to try to change the attitude about smoking is the realization that most people who smoke, most adults who smoke, have begun when they were children and began before they had a true understanding of the consequences ultimately of their choice to smoke when they're 14.

If somebody at age 20 wants to begin smoking and fully understands the consequences of his or her actions, that's a choice that an individual should have in our society.

However, most smokers don't make that choice after age 20, so that education of the public and particularly of young people and of those who influence young people is critically important in this.

Q. As I say, one of those presentations in your resume', the title of which -- which you apparently delivered in Argentina: Official Misuse of Tobacco Industry Documents: A Trojan Horse Uncovered.

What was the subject of that presentation and why did you choose that topic?

A. The purpose of the presentation was to point out that well-meaning attorneys, or other folks involved in tobacco issues, need to scrutinize very

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carefully the sources of information that they get. And that the information may not be all that it appears to be.

Q. Dr. Houston, you became the director of the department of preventive medicine and environmental health at the American Medical Association in what year?

A. 1990.

Q. And you maintained that position ever since?

A. Yes.

Q. Now, in that capacity, do you have occasion to study the public positions that various tobacco companies take with respect to legislation, take with respect to what they say to the public about Surgeon General's Reports, the report of the Environmental Protection Agency, and that kind of thing?

A. I do.

Q. And is it part of your function to zero in on representations made by the tobacco industry to the public which you consider to be unscientific and which you consider to be misleading?

A. Part of my function is to try to understand the forces that impact on the tobacco consumption. And part of that has to do with the way the tobacco industry represents its products, the way the tobacco

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industry influences public policy, and the way that the scientific process is affected by a variety of issues, including the tobacco industry.

Q. And how in your opinion has the scientific process been affected by the public positions that the tobacco industry has taken on issues relating to smoking and health and secondhand smoke?

A. Well, that's a long story that goes back many years. In relating to how the tobacco industry has responded, for example, to the release of Surgeon General's Reports, to reports of the adverse effects of smoking and health in the literature and the reports about that in the public press, and in the way the tobacco industry has approached, through research funding as well as through harassment of legitimate scientists, the whole issue of tobacco.

Over the years a variety of scientific reports have been released about tobacco and health. The most famous of them and the one that people think about the most probably are the Surgeon General's Reports that go back to 1963, '64.

And those have been graded almost uniformly by the tobacco industry as being dismissed, as being -- as saying: Well, that's all very interesting, but we need more information. We really don't know what

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causes cancer. We really don't know what causes heart disease. Nicotine isn't addictive and we need more research.

That's been the public posture of the industry for a decade. And it hasn't changed, as far as I can tell recently, with one exception of the Liggett company.

The industry has positioned itself in the public as creating with its own witnesses at hearings and its own stories; that over the years it has arranged to be placed in the popular press that there really is a great amount of controversy in the scientific community about the effects of the tobacco on health; that smoking doesn't really cause lung cancer; that there are all manner of other things in the environment and in diet and other things that one must take into account when it comes to the effects of tobacco on disease.

The way the industry has positioned itself in public, in newspaper advertising, in magazines, and as I said, in approaching research, is that in 1954, for example --

As I said, it's a long answer because it's a broad subject that goes back that far.

In the 1950s, for example in 1954, the

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tobacco industry put in newspapers and magazines a statement which was to the American people in response to the first big studies on lung cancer, and essentially said: We want to get to the bottom of this, too. We're interested in the health of the public. We're a responsible set of companies. We want to find the answers and we will do research that will get to the bottom of whether tobacco causes lung cancer and is associated with all these other -- any other problems.

Q. Now, Dr. Houston, from the standpoint of a controversy, in terms of the medical and scientific communities in the United States -- and by the way, how many members are there in the American Medical Association?

A. There are about 300,000.

Q. All doctors from all over the United States?

A. Doctors, medical students and resident physicians, yes.

Q. From the standpoint of the medical and scientific communities in the United States, is there any controversy at all on the issue of whether smoking causes disease?

A. There's not.

Q. In terms of the field of your specialty, in

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terms of your work at the American Medical Association, do you get involved in trying to ascertain the level of public knowledge concerning a real, legitimate health problem?

A. Yes. The AMA engages in public surveys of health risks, and we try to stay abreast of the literature and of public surveys and other issues that relate to what people think about, different sorts of illnesses, different sorts of public health problems, what they worry about. In other words, women worry a lot about dying of breast cancer. What are the kinds of educational programs that doctors can do to educate women about the need for getting mammograms. That's the sort of thing that my department, in conjunction with out department of women and minority health does.

Q. From a medical standpoint, what is the greater danger to women, lung cancer or breast cancer?

A. More women get breast cancer every year, but more women die from lung cancer every year.

Q. Is that fact widely understood by women in this country, do you feel?

A. Unfortunately, it's not.

Q. And why is that?

A. There are probably several reasons for it. There was a USA Today poll a couple of years ago that

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asked some of these very questions. And the fear that women have or the thought that they had about whether they had a greater chance of dying from breast cancer or other kinds of diseases was one of the points of this particular survey.

Women believe that they had an extremely high chance, about five times the actual occurrence rate, of dying of breast cancer.

First of all, there's been a lot of publicity about breast cancer in the women's press, in Cosmopolitan, in newspapers. The availability of mammograms and their increasing sophistication, their ability to find breast tumors of tiny, tiny sizes has gotten a lot of attention. And women are afraid of breast cancer because they don't know how they get it. It's being understood better now that there's some familial tendency to breast cancer. And there may be some influence of a high fat diet on breast cancer.

But, in general, women are afraid of this because they're not sure of how it's going to strike or who it's going to strike.

As relates then to cigarette smoke and smoking and lung cancer, women particularly don't feel a personal risk from smoking. Many smokers don't feel that personal risk at all anyway, but for whatever

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reason, in a variety of surveys, women don't feel the personalization of that risk as it applies to them.

Q. Dr. Houston, in terms of your review and analysis of the popular press magazines, women magazines in particular, over the last several years has a lot less been written about the lung cancer threat to women as opposed to the breast cancer threat to woman?

A. Yes. There's been considerably less coverage of tobacco-related diseases than other causes of illness among women.

Q. And from a purely scientific standpoint, the cause, the major cause of death between lung cancer in women and breast cancer in women is lung cancer, correct?

A. That's correct, lung cancer became the largest cancer killer among women in 1986 or so.

Q. Based on your education, background, training, based on your 20 years of looking at smoking and health issues, based on your years of studying tobacco advertising, tobacco responses to science, Surgeon General's Reports and others and the various polls of the American Medical Society and your position at the American Medical Association, do you feel that you have the background and the understanding to

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express an opinion on this topic?

A. Yes, I do, for the most part.

Q. Dr. Houston, how old an organization is the American Medical Association?

A. 150 years.

Q. Now, we've been referring from time to time to various medical publications. And, of course, the publication of the AMA is the Journal of the American Medical Association. How long has that been around?

A. It's been over 100 years. I don't know the exact time of the first issue.

Q. And how often -- is that a monthly?

A. Weekly.

Q. It's a weekly.

And who does it go to, the membership?

A. It goes to the membership of the AMA and to subscribers generally. It's one of the most widely distributed medical journals in the world.

Q. Now, obviously, you've told us that you're the director of the department of preventive medicine and environmental health at the AMA. Could you give us an idea as to some of the -- now, you are a full-time employee of the American Medical Association?

A. Yes.

Q. I mean, at the present time you're not

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treating patients?

A. That's correct.

Q. This is your full-time job and you're on a salary?

A. Yes.

Q. Give us an idea as to some of the other departments or divisions within the American Medical Association where there would be at the head of it a doctor working full-time such as yourself?

A. Well, I work in a division called the division of health science, and in that division there are several departments that have doctors as the head of those divisions. There's a division of mental health, there's a division of adolescent health.

There are two divisions that are headed by Ph.Ds: one on HIV and AIDS, and one on women and minority health.

And then there's my department on preventive medicine and environmental health. Those are the departments within the division.

In another division, the division of drugs and technology, there are several physicians that head specific departments dealing with pharmacology and -- relate to medications and to medical devices, to technology issues, to computers in medicine, and other

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things such as this.

So there are several departments in that particular division that are also headed by physicians.

Q. In terms of overall staff, can you give us a rough estimate as to how many full-time M.D.s are working exclusively for the AMA?

A. Well, there are about 900 employees of the AMA all together.

Q. You're based in Chicago?

A. In Chicago. And I expect that there are about 35 or 40 M.D.s on the staff in one capacity or another. In my department there is another M.D., besides myself, in a capacity of what we call a senior scientist. She is board certified in occupational medicine and internal medicine and has a Master's degree in public health.

There are four other individuals in my department with Masters degrees in either public health or education.

And in others -- other departments across the division, there are people with a variety of degrees, including M.D. and M.Ph. degrees.

Q. Now, Dr. Ronald Davis has testified in this case previous to you, and what is his position within the AMA? I know he's not a full-time employee of the

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AMA, but he has a role?

A. He, in fact, is the chairman of what we call our council on scientific affairs. The council is one of several councils within the AMA. There's a council on the ethical and judicial affairs and a council on legislation and so on.

The council on scientific affairs is the scientific and medical council that looks in a deliberate way at science issues and health issues within the AMA. It helps the AMA understand the policy issues that are involved, the public health and scientific issues that are involved in what it is the AMA does, and issues a variety of reports, comments on a variety of issues related to science and health. And Dr. Davis is the current chair of that group.

It's elected by the house of delegates, the council is, from among its membership. The house of delegates is the policy-making body of the AMA that's elected from county and state medical societies, and they come to Chicago twice a year to the annual meetings of the AMA.

Q. How are policies formulated of the AMA in general, and let's say specifically with respect to your department? What is that process before there is an official policy of the AMA on a given subject?

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A. Policies are introduced to the AMA house of delegates, which is sort of like the House of Representatives in the way it works, either by individual delegates or by the state medical societies or the specialty societies. Like the American Academy of Surgeons is a specialty society.

They would, internally at the state level or the society level, decide that a particular issue was worthy of the AMA to consider as a policy statement; would introduce it as a policy resolution; attach supporting documentation when appropriate.

The policy goes to what we call a reference committee, which is almost like a Congressional hearing committee, which discusses each one of the proposed resolutions.

That discussion is on both sides if there are -- if there's disagreement about the issue. Sometimes AMA staff are asked to comment one way or another on existing policies that relate to the issue at hand. Then the AMA house of delegates decides whether that particular policy should be adopted by the AMA or not.

Often times, that policy then will result in an action by the AMA, such as a report or a letter to a Congressman or a press conference related to a

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particular issue. It might relate in us applying for a grant on a particular issue or going in partnership with the Lung Association or the National Cancer Institute or an educational project.

So those are the sorts of things that happen after a policy statement is adopted.

Q. Dr. Houston, has the American Medical Association adopted a formal policy, a formal institutional policy, with respect to the Council for Tobacco Research, and if so, tell us what that policy is.

A. The AMA has adopted a policy which states that research institutions, hospitals, medical schools and so forth, should not engage in grant activities that are funded by the Council for Tobacco Research by the Tobacco Institute or the Center for Indoor Air Research and other groups, including direct funding from the tobacco industry.

I recognize that the Tobacco Institute itself doesn't give out grants and I misspoke when I said that.

But from the industry and its analogous research groups, the AMA has, in fact, an official position that says that hospitals and medical institutions should not deal with them.

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Q. And what's the reason for that policy?

A. There were several reasons. One being that the institutions that we have listed now seem to have policies that don't conform to, in some cases, legitimate scientific research principles that we talked about earlier, and how scientific research is handled and how money is distributed.

We also formulated that policy based on the, if you will, the failed promise of the Center for Tobacco Research and other groups in their failure to live up to their promises of really finding out the answers to the questions that relate to tobacco and illness; that is, that these institutions purported themselves to be interested in finding out those answers, whether smoking causes illnesses.

And it seemed to the AMA that that was not going on and that it was not appropriate for the scientific community to continue to participate in questions that were not really being answered in that fashion.

And finally, the reason for the policy was that we didn't feel it was ethically proper for physicians and hospitals to take money that ultimately came from the sale of tobacco products, and thereby, the suffering and death of our patients.

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Q. Dr. Houston, in terms of the process itself, how did the American Medical Association, as an official organization, make known this policy to medical schools and to hospitals and other institutions?

A. Oh, it was covered in the proceedings of the house of delegates, and that got picked up a little bit in the press, but we also sent out a letter to medical schools and to research institutions advising them of this policy and of the reasons for it.

In addition, we adopted a subsequent policy stating that in our opinion scientific and medical journals should not accept research papers that were funded by the tobacco industry or its analogous research institutions.

Q. Good afternoon, Dr. Houston. My name is Walt Cofer. I represent Lorillard and Philip Morris.

You are not an expert on oncology, are you?

A. No.

Q. You are not an expert in epidemiology, are you?

A. I'm not.

Q. Or statistics or biostatistics.

A. No.

Q. You don't hold yourself out to your

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colleagues or your patients as an expert in pulmonology, do you, sir?

A. Not any further than any other family physician does.

Q. Or cardiology, correct?

A. No. We treat a lot of patients who have both heart and lung diseases.

Q. You don't have a degree in public health, do you?

A. I don't.

Q. You have never conducted any original research on the causes of lung cancer or heart disease, have you, sir?

A. That's correct.

Q. Now, you are the point person for the American Medical Association's antitobacco efforts, correct, Doctor?

A. Yes.

Q. You consider yourself to be an antitobacco advocate?

A. I consider myself to be a pro health advocate. The other side of that coin, in terms of tobacco control, is called by some an antitobacco advocate.

Q. You certainly don't object to that

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characterization, do you, Doctor?

A. No.

Q. A goal of the American Medical Association is to reduce tobacco use, right, sir?

A. That's correct.

Q. If it were reduced to zero, it wouldn't bother you, would it?

A. That would be the best for public health.

Q. And you do have strong feelings about cigarettes and cigarette companies, don't you, sir?

A. I do. And so does the American Medical Association.

Q. You've characterized the activities against smoking as a war, haven't you, Doctor?

A. I have, and so have a great many other people.

Q. You believe it is a war, don't you, sir?

A. Yes.

Q. You are fighting battles in that war every day, aren't you?

A. That's correct.

Q. Now, your father was a cigarette smoker, correct, Doctor?

A. Winstons.

Q. And he died of coronary heart disease, right?

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A. Yes.

Q. And in May of 1986, you wrote an editorial about cigarette smoking that was essentially a eulogy to your father, correct, sir?

A. Yes, it was.

Q. You stated in that editorial, quote: "Prevention has taken on a new dimension for me, a new intensity. It's personal now." Correct, sir?

A. Yes.

Q. As a general rule, Doctor, you believe tobacco companies should be held liable in lawsuits brought by smokers, correct?

A. I don't know of how one can generalize on that. I think there is a liability issue that comes into question. I believe that there is liability associated with the actions of the tobacco industry, yes.

Q. Your deposition was taken in this matter on June 9th, 1987. You were under oath then, just as you are today, correct, sir?

A. Yes.

Q. On page 90, Line 23, you were asked this question: Do you believe the tobacco companies should be liable for damages in lawsuits brought by smokers?

Answer: Generally, yes.

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That was your testimony, correct, Doctor?

A. Yes.

Q. You consider the companies that sell tobacco products to be your enemy, correct?

A. That's a way to characterize it.

Q. You believe that a physician or dentist must take care to create an alliance with the patient against an enemy and that that is a company selling tobacco products, right?

A. I don't know about creating an alliance against an enemy with patients. That's generally not something that I've been personally engaged in.

Q. Again, on Page 92 of your deposition under oath, taken June 9th, 1997, Line 13, you were asked this question and gave this answer:

Do you agree with the statement, a physician or dentist must take care to create an alliance with a patient against an enemy, that is, the company selling tobacco products?

Answer: I think that's a pretty accurate statement.

That was your sworn testimony in June, correct, sir?

A. Could I see the deposition, please?

Q. Absolutely.

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May I approach, Your Honor?

You are Thomas Houston, correct?

A. Yes.

Q. Right there.

A. That's okay.

Q. Now, let me read you another statement and ask if you agree with this. I'll tell you in advance, it's your words.

Within the scientific community, there is always room for disagreement. That's how scientific studies work.

(The videotape was paused.)

MR. NEWSOM: Your Honor.

THE COURT: Wait a minute.

MR. NEWSOM: I believe a portion was left out.

THE COURT: Let me see if I can find it.

MR. NEWSOM: On 7283.

MR. ROSENBLATT: This is obviously edited down already. This is a finished product.

THE COURT: Let me see what you're talking about. I can't find mine.

(The following proceedings were had at sidebar:)

THE COURT: The copy that I'm looking at

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starts on Page 7283.

MR. ROSENBLATT: 83 or 93?

THE COURT: 83. Apparently there was a counterdesignation from Line 3 through 22.

What does this mean, it's out?

MR. NEWSOM: That was out.

THE COURT: And then gets picked up again on Page 7293.

So Page 7283 is where the problem comes in, Line 3 through 22.

MR. NEWSOM: Yours shows it in, too.

THE COURT: What do you do with this thing? It hasn't been snipped or anything?

VIDEOGRAPHER: No. It's not on this tape. It's on the original videotape, on the master tape. What we did was took the designations we got in pink and made a new tape. The other tape is there.

THE COURT: So this is not on there?

VIDEOGRAPHER: This is not on the tape that's on the machine.

MR. NEWSOM: You can take it and put it in the machine.

THE COURT: Why don't we just read it? Say we inadvertently left it out and we can just read it.

MR. NEWSOM: Or give him a couple of minutes.

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He can find it.

MR. ROSENBLATT: 3 to 22, is that what you're talking about?

MR. NEWSOM: That's correct.

MR. ROSENBLATT: And that conforms with what you have?

MR. HEIM: This is the only thing here.

Judge, it's okay to read it. Why don't you just tell the jury, inadvertently, nobody's fault, and we'll read it and then pick back up on the tape.

MR. ROSENBLATT: Who reads it?

MR. HEIM: Jim can read it.

(The sidebar conference was concluded, and the following proceedings were held in open court:)

THE COURT: If I've learned nothing else in this trial, I've learned one thing, that nothing in life is easy. Something always happens. Let me explain to you what the situation is so you understand.

We had a master tape. We edited the master tape, and from the master tape took all the designations everybody had agreed to and made a new tape. But we had a mistake on Page 7283, and that page was inadvertently left out. So we can't go back and put it in.

So what we'll do is have Mr. Newsom read that

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one section, which would normally come in at this point, then we'll pick up the tape.

(Mr. Newsom read from the deposition as follows:)

Q. You would agree, wouldn't you, Dr. Houston, that your testimony in this case is intended to aid the plaintiffs in their battle against the tobacco industry, correct, sir?

A. My testimony in this case is based on a request by plaintiffs' lawyers. If that has a secondary benefit in aiding the plaintiff in their plight against the industry, I suppose that's what it is.

Q. Your deposition, Page 93, Line 21, quote: But you agree that you are providing testimony in this case which would aid them in their battle, as you might put it, against the tobacco industry? End of the quote. Yes.

That was your answer to that question, correct, sir?

A. Yes.

Q. And that battle is just one small part of a larger war, correct, Doctor?

A. I suppose it is.

(The reading by Mr. Newsom concluded.)

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THE COURT: Okay. And then we pick it up from where we start. Now going to 7293, bottom of the page, Line 20. Is that it, Mr. Newsom?

MR. NEWSOM: 7293, Line 23.

(The videotape was continued as follows:)

Q. Now, let me read you another statement and ask you if you agree with this. I'll tell you in advance, it's your words:

Within the scientific community, there is always room for disagreement. That's how scientific studies work. That's how science works from the point of view of proposing a hypothesis, testing it, dissecting it, and trying to reproduce the effects from one study to the next, and see whether a body of evidence exists.

Agree with that?

A. Yes, sir.

Q. Now, it's true, isn't it, sir, that there are a number of antitobacco organizations in this country and abroad, correct?

A. Yes.

Q. The Group Against Smoking Pollution is one, right?

A. Yes.

Q. Action on Smoking and Health is another,

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correct?

A. Correct.

Q. Tobacco Product Liability Projects, a third, right?

A. Yes.

Q. Each of these organizations regularly puts out newsletters or holds press conferences and generally communicated with the public their view on various issues pertaining to smoking and health, correct, Doctor?

A. Yes.

Q. And that's been true for a number of years, hasn't it?

A. Yes, it has.

Q. You told the jury about the American Medical Association and your tobacco control division, right?

A. Yes.

Q. The American Heart Association has a comparable one, correct?

A. I think so.

Q. American Lung Association does, too, right?

A. And the American Cancer Society.

Q. And again, they regularly communicate with the public their views on issues relating to smoking and health, right?

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A. Correct.

Q. You told us on direct examination that the American Medical Association sent out letters to its members urging them not to accept funding from tobacco institutions; is that correct?

A. Yes, it is.

Q. And you also told them and told us that it's the position of the American Medical Association that you won't publish a study if it was funded by tobacco money, right?

A. No. I said it was the position of the American Medical Association that medical journals should not accept research published by the tobacco industry. Each individual journal has to make up its mind whether it wants to do that or not.

Q. How about JAMA?

A. JAMA is an independent journal. It's not the mouthpiece of the American Medical Association.

Q. Does JAMA do it?

A. JAMA is currently, as I understand it -- and I'm not on the editorial board -- is reviewing that recent policy statement of the AMA and has not come to any conclusions as to what its policy will be.

Q. So even as we sit here today, the Journal of the American Medical Association hasn't even followed

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the advice of the American Medical Association; is that correct?

A. That's correct.

Q. But, nonetheless, what the AMA has urged is the journals shouldn't publish research if it's funded by tobacco money, right?

A. That's correct.

Q. And that's true regardless of the results of the study, right?

A. Yes. And based on the ethical constraints or the ethical precepts of the source of the funding -- again, following the lead of the American Thoracic Society journals -- the house of delegates thought that it was an ethical imperative for medical journals to stay away from tobacco industry-funded research.

Q. So the American Thoracic Society has the same policy?

A. Correct.

Q. They have urged their readership, their members, not to publish articles funded by tobacco money.

A. Yes.

Q. Regardless of the study, right?

A. Correct.

Q. Regardless of the study's health

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significance, right?

A. That's correct.

Q. Dr. Houston, I want you to tell us all the reasons, as Mr. Cofer stated, why you and the American Medical Association feel that you're in a war against the tobacco industry. From a public health standpoint, why does that war exist?

A. The war exists because the tobacco industry has consistently done everything it can to obstruct the public health community of physicians and public policy as regards tobacco and health, has engaged in a variety of actions to create doubt within the public's mind, and has done a great deal of work to subvert the public health process in legislative and policy bodies regarding tobacco and health, and generally has obstructed the efforts of science and health related to tobacco control for decades.

Q. Now, the protagonists in this war on the one hand are the tobacco companies. Who, from a public health standing -- who is on the other side of this war? You have got the tobacco companies on one side. From a public health standpoint, who is on the other side?

A. The voluntary health agencies, like the American Cancer Society, the American Heart Disease

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Association, the American Lung Association, the AMA, medical specialty societies of every description, from the pediatricians and the family doctors, to the specialists in lung disease, the cancer specialists, hospital associations, collections of individuals who have been harmed by tobacco smoke, such as the group, Americans for Nonsmokers Rights, and people who represent the public interest generally, nurses associations, church associations. That's an organization that has been a very good group, for example, in communicating the problems of smoking and health in an unexpected source, to churches.

There is a coalition of black ministers that's involved in educating their congregations in tobacco control led by the Reverend Jesse Brown, and others that I could name.

Q. Okay. Now, World War II lasted four years. How long has the tobacco war lasted?

A. Probably since before World War I, but it's been going on for quite a long time. The war, as we understand it today in the metaphor that you used, really didn't start heating up until the 1950s when the scientific facts about smoking and health really became generally known, both to the physician and the physician public, the medical organizations, and to the

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public generally.

Q. Counsel asked you about whether or not you had done personal research on certain aspects of tobacco and health.

You never did personal research on tuberculosis, did you?

A. That's correct.

Q. You know what caused it, don't you?

A. Sure.

Q. You know that from reading and studying and analyzing, correct?

A. Correct.

Q. You feel your father's death was connected to his habits of smoking Winstons, correct?

A. I do.

Q. But that was his choice?

A. That was his choice. It was made in an era when -- in World War II he joined the Navy underage and began smoking there, as many, many servicemen did, in an era when the health effects and the consequences of tobacco smoking were not well known and were only beginning to be understood when it comes to lung cancer and other diseases.

So he made a choice that was uninformed from the point of view of health, because there wasn't much

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data available. Whether he would have made the same choice today, I don't know.

Q. Since that Surgeon General's Report came out in 1964, and when you look at the history of all the yearly Surgeon General's Reports up until today, has there ever been any deviation or fallback from the position expressed in 1964 that cigarette smoking causes disease?

A. No. In fact, it has been an amplification of and a better understanding of the wide effects of cigarette smoking on disease relating to a variety of specific subjects that go from chronic lung disease to heart disease, addiction, secondhand smoke, and other issues.

Q. In this war, when you look at the tactics of the tobacco industry with respect to the scientific information coming out about smoking, how has that related to the tobacco industry's reaction and public posture with respect to scientific information coming out more recently on the issue of secondhand smoke? Is there a relationship?

A. The kind of arguments that the tobacco industry made early on related to direct smoking are the same kind of arguments that the tobacco industry has made in recent years about secondhand smoke and its

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effect on health.

The words may not have been precisely the same. Often they were: We need more research; it's unclear, we don't know enough.

But the thrust has been the same.

(The videotape was concluded.)

THE COURT: Is that it?

MR. ROSENBLATT: That's it, Judge.

THE COURT: Okay. I guess it's lunchtime.

We still have to confer, the lawyers and I. You folks go to lunch. So you be back here 1:30. Okay.

(The jurors exited the courtroom.)

THE COURT: What's the next thing we do?

MR. ROSENBLATT: The only thing we have for the jury that we've completed is Lisanti.

THE COURT: Okay. And we have Lisanti here. So we'll do Lisanti this afternoon.

MR. ROSENBLATT: Right. Lisanti is not video.

THE COURT: All right. We'll do what we can.

Did you have a chance to go over the Lilly thing?

MR. HEIM: Judge, I didn't. I'm working on it, though.

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THE COURT: Don't worry about it. I skimmed through it rather quickly. There's not a lot to it. It's very short.

MR. HEIM: I think I could probably go over it with Your Honor this afternoon in a short amount of time.

THE COURT: Okay. Then we'll take our lunch recess. 1:30.

(A lunch recess was taken at 12:15 p.m.)

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